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ABSTRACT

This issue summarizes the development and impact of charter schools. It examines aspects of laws that have paved the way for charter schools and describes some of the litigation that has accompanied the charter-school phenomenon. The text offers practical advice on how to draft good charter-school contracts and notes some of the past and ongoing research that addresses the questions of whether charter schools have been able to deliver what proponents promised and what school children need in order to receive the type of education that they deserve. The text opens with a breakdown of states with charter-school legislation and the year that these laws were passed. During the 1990s, 36 states, the District of Columbia, and Puerto Rico enacted legislation enabling charter schools. Most of the document is devoted to information charts on charter schools. This information, categorized by state, includes synopses of eligible applicants for charter-school status, relation of charter schools to the school system, the organizational status of the charter schools in the state, the authority as regards charter-school employees, and the finance provisions for the state's charter schools. Brief overviews of charter-school litigation are presented after the charts, followed by issues and checklists for the charter-school contract. (RJM)

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A Word On. . .

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- • • Charter School Legislation
- • • Charter School Litigation
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- • • Charter School Research

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The charter school movement is one of the fastest growing innovations in public education in this country. The concept of "charter" school appeared in a book by a retired teacher, Ray Budde, *Education by Charter: The Restructuring of School Districts*, published in 1988. He proposed the model of a "school within a school" involving an educational charter between a group of teachers and their school board. Al Shanker, President of the American Federation of Teachers in a speech to the National Press Club in 1988, adapted the concept presented by Budde and proposed a school that would be completely autonomous operating within another school.

During the 1990s 36 states, the District of Columbia and Puerto Rico enacted legislation enabling charter schools. In describing the purpose for much of this legislation, the various states cited such goals as providing innovative programs, opportunities for innovative learning and assessments, greater options for parents and students in choosing schools within the public school system and more freedom from centralized control and the bureaucracy of a public school district. Pursuant to these laws, approximately 1,200 charter schools serving an estimated 300,000 students had been established as of July 1999. For the 1999-2000 school year, it is estimated that at least 1,700 charter schools are in operation.

The current Federal Government Administration's strong support of charter schools indicates that this growth will continue. For 1999-2000 the U.S. Department of Education awarded more than $95 million in grants to support the start up and development of charter schools in 32 states, the District of Columbia and Puerto Rico. President Clinton has requested $130 million from Congress for Fiscal Year 2000 for the Public Charter School Program. Clinton has stated a goal of 3,000 charter schools by the year 2002.

Given the strength of the charter school movement and its many emerging problems, this issue of *A Word On. . .* examines this development in educational reform. It looks in summary fashion at some of the aspects of those laws, describes some of the litigation that has arisen out of the charter school phenomenon, offers some practical advice on how to draft good charter school contracts and notes some of the past and ongoing research that seeks to answer the question of whether charter schools have been able to deliver thus far what proponents promised, what legislators hope they will and most importantly, what school children need to receive the high quality education that they deserve.

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• • • Charter School Legislation

States with Charter Schools Legislation by Year of First Enactment

1991	1992	1993	1994	1995	1996	1997	1998	1999
Minnesota	California	Colorado Georgia Massachusetts Michigan New Mexico Wisconsin	Arizona Hawaii Kansas	Alaska Arkansas Delaware New Hampshire Louisiana Rhode Island Wyoming	Connecticut Dist. of Columbia Florida Illinois New Jersey North Carolina South Carolina Texas	Mississippi Nevada Ohio Pennsylvania	Idaho Missouri New York Virginia Utah	Oklahoma Oregon

Source: *A Comparison of Charter School Legislation* (RPP International under contract to U.S. Department of Education, Dec. 1998)

State Charter School (CS) Legislation: Statutory Provisions Regarding School Organization and Authority (February 1998)

State	Eligible Applicants	Relation to School System	Organizational Status	Authority Regarding Employees	Finance Provisions
AK		Operates as school in the local district.		CS Academic Policy Committee (teachers, parents, and school employees) selects principal who selects or appoints employees of CS. CS employees are covered under district collective bargaining agreement (unless exempted in contract).	Local school board provides CS with annual budget.
AZ	Public body, private person, or private organization.			CS governing body is responsible for policy and operational decisions. Charter shall include description of personnel policies and qualifications.	Application may include a financial plan for operation of CS.
AR	Any public school (conversions only).	Operates within local school district.			
CA	Teachers, parents, pupils, community members. Private entity may provide funding/ assistance to establish or operate a CS. No private school conversions.	Operates independently from existing school district structure.		Charter petition includes qualifications of employees.	
CO	Parents, teachers, and community members. No private school conversions.	CS is a public school which is part of the school district in which it is located.	May organize as a nonprofit corporation.	CS responsible for its own operation, including personnel matters. Application includes explanation of employment policies and relationship between CS and its employees.	CS responsible for its own operation including the preparation of a budget.
CT	Any person, association, corporation, organization, or other entity, public or independent institution of higher educatioa, local and/or regional board of education, or regional educational service center. No private school conversions.	Operates independently of any local or regional board of education.	Organized as a nonprofit entity.	CS application includes number and qualifications of teachers to be employed (50% regular certification; 50% temporary/alternate certification). For local CS (conversions), employees shall be members of district bargaining unit and shall be subject to same collective bargaining agreement. For state CS (start-ups), CS governing council shall act as board of education for purposes of collective bargaining.	Application includes financial plan for operation of CS.

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DE	Any person, university, college, or nonreligious, non-home-based, nonsectarian entity. No private school conversions.	Operates independently of any school board and has the same standing and authority as reorganized school district board of education (except the power to tax).	Organized under general corporation law.	CS has power to hire, manage, and terminate employees in accordance with its personnel policies (35% of teachers may be non-certified if no qualified alternative certification program exists). CS employees have right to organize and bargain collectively and shall not be members of district bargaining units.	CS has power to determine its own budget.
FL	An individual or group, teachers, parents, existing public school, or a legal entity organized under state laws. No private school conversions.	Terms and conditions for operation of CS are set forth by the sponsor and the applicant in the charter.	Organized as a nonprofit organization. May be a private or public employer.	CS selects its own employees. Charter addresses teacher qualifications (CS may employ non-certified teachers in same manner as other public schools). CS employees may bargain collectively as separate unit or as part of existing district bargaining unit (determined by structure of CS).	Charter addresses the financial management of school. Sponsor monitors revenues and expenditures of CS.
GA	Any public school (conversions only).	Operates within local school district.			
HI	Any public school (conversions only).	CS establishes local school board as its governing body (the state has only one district).			
IL	Teachers, school administrators, local school councils, colleges or universities or faculty, public community colleges or faculty, corporations, or other entities and their representatives. No private school conversions.	Operates independently from local school district.	Organized as nonprofit corporation or other nonprofit entity.	Charter proposal includes explanation of relationship between CS and its employees (CS may employ non-certified teachers if they meet specified qualifications). CS employees may bargain collectively only as a separate unit from existing district bargaining unit.	CS responsible for management of its fiscal affairs including the preparation if its budget.
KS	School building or school district employees groups, educational services contractors, and other persons or entities.	Operates within a school district structure.		District employs persons to be assigned to charter schools. Charter must contain the terms and conditions of employment.	Charter contains the proposed school budget.
LA	Group of 3 or more teachers, 10 or more citizens, a public service organization, a business or corporate entity, a LA college/university, faculty of nonpublic school. No private school conversions.	CS is an independent public school.	Organized as nonprofit corporation, except for those CS formed through contract between a local board of education and the state board of education.	CS governing authority employs faculty and has exclusive authority over employment decisions (25% of teachers may be non-certified if meet certain qualifications), except that employees of CS formed by local school board are employees of school board and not the CS. Proposed charter includes personnel policies and employment practices. CS employees are covered under local school board collective bargaining agreements, except as provided in charter.	Proposed charter includes a financial and accounting plan.
MA	Non-profit business or corporate entity, 2 or more certified teachers, 10 or more parents. No for-profit business or corporate entity. No private school conversions.	Operates independently of any school committee (for both Commonwealth and Horace Mann CS).	Commonwealth and Horace Mann CS are organized as body politic and corporate.	Application shall include number and qualifications of teachers to be employed. Staff are employees of CS. A Horace Mann CS shall be exempt from local collective bargaining agreements as provided in charter, but Horace Mann CS employees continue to be members of local bargaining unit and receive the salary/ benefits established by the bargaining agreement.	The CS board of trustees shall develop the annual budget. Horace Mann CSs must submit budget request to school district for approval.

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MI	One or more persons, or an entity.		Organized as nonprofit corporation.	CS may employ staff (teachers must be certified) and determine personnel policies and compensation. The employees of a CS that has charter with local school district shall be covered by collective bargaining agreement that applies to other employees of school district.	
MN	One or more licensed teachers. No schools affiliated with a nonpublic sectarian school or religious institution.		Organized as cooperative or nonprofit organization.	CS employs staff (teachers must be licensed). CS employees may organize a bargaining unit. CS bargaining units shall remain separate from district bargaining units, unless otherwise agreed upon.	CS board of directors decides matters related to operation of school, including budgeting.
MS	Any public school (conversions only).	Operates within local school district.		Employees of CS are employees of school district. Employees are entitled to same rights/privileges and benefits to which all other employees of school district are entitled.	
NV	At least 3 licensed teachers alone or in combination with 10 or more members of general public, representatives of an organization devoted to public service, representatives of private business, representatives of college/university. No private school conversions.	Application includes system of organization and operation for CS. Board of trustees of district shall not interfere with operation of CS except as authorized in charter or statutes applicable to CS.		Application includes employment policies and practices (75% of teachers licensed). CS employees are covered by employment provisions of the collective bargaining agreement with the district. Upon renewal of charter, employees of CS may apply for recognition as a bargaining unit. CS may request waiver from specific provisions of collective bargaining agreement.	SEA adopts regulations that prescribe the procedures for budgeting.
NH	Nonprofit organization (college, university, museum, service club, etc.), group of 2 or more NH certified teachers, group of 10 or more parents. No private school conversions.	Operates independent of any school board.	Operated as nonprofit secular organization.	Application includes employee qualifications (50% of teachers certified or 3 yrs experience) and personnel compensation plan. CS employees may organize collective bargaining units, separate from district bargaining units.	CS board of trustees determines the annual budget. Application includes annual budget.
NJ	Teachers, parents, higher education institution or private entity. A private entity may not realize net profit. No private school conversions.	Operates independently of local board of education.	Organized as body corporate and politic.	For conversions, employees are members of bargaining unit defined in agreement. For other CS, board of trustees hires employees (teachers must be certified) and determines whether or not to cover employees under terms of district collective bargaining agreement.	CS board of trustees has authority to decide budgeting for school.
NM	Any school within local school districts (conversions only).	Operates within a school district.	Organized as restructured public school w/in local district.		CS determines a school-based budget which must be approved by local board and state board.
NC	Person, group or nonprofit corporation may apply on behalf of a private nonprofit corporation. Private persons and organizations can provide funding/assistance.	CS chooses to operate independently of local board or agrees to be subject to some supervision and control of administrative operations by local board.	Operated by a private nonprofit corporation.	CS board of directors employs staff (75 % of k-5 teachers and 50% of 6-12 teachers must be certified). Staff are employees of CS, not district. If CS elects total independence from local board, its employees shall not be employees of local district for purposes of benefits. If CS agrees to supervision and some administrative control by local board, its employees shall be employees of local district for purposes of benefits.	Application contains proposed budget for school.

OH	Any individual or group of individuals. No private school conversions.	Operates independent of any school district.	Organized as nonprofit corporation.	CS governing authority may employ staff (teachers must be certified). For conversions, CS employees remain part of district collective bargaining unit and subject to collective bargaining agreement (unless otherwise agreed). For start-ups, CS employees may organize and collectively bargain as separate unit from district bargaining units.	Contract specifies an estimated school budget.
PA	An individual, one or more teachers, parents or guardians of students, nonsectarian college, university, museum, nonsectarian nonprofit corporation. No private school conversions.	Operates independently from existing school district structure.	Organized as public nonprofit corporation.	CS board of trustees employs staff (75% professional staff certified) and determines employment policies. CS employees may organize collective bargaining units which shall be separate from district bargaining units	CS board of trustees shall have authority to decide matters relating to operation of school, including budgeting.
RI	Existing public schools, groups of public school personnel, or public school districts. No private school conversions.	Operates independently, but within existing school district structure.		Application includes employee qualifications (teachers must be certified) and employment policies. CS teachers and administrators remain employees of district for purposes of salary, benefits, and pension. CS teachers remain members of district collective bargaining unit.	Application provides a financial plan including a proposed budget.
SC	A public, nonprofit corporation.	Operates within a public school district. CS is considered a public school that is part of school district for the purposes of state law and state constitution.	Organized as public nonprofit corporation.	CS shall hire staff (start-ups may hire up to 25 % non-certified teachers working towards certification; conversions may hire up to 10% non-certified teachers working towards certification) and determine employment policies. Application shall include an explanation of relationship between CS and its employees. Employees of conversions remain employees of district	Charter committee has power to decide all matters related to operation of CS, including budgeting.
TX	Institution of higher ed., private or independent institution of higher ed., an org. exempt from taxation, a governmental entity.	Open-enrollment CS is part of the public school system of the state. If located in district facility must operate according to terms of agreement governing relationship between CS and school district.		Charter specifies employee qualifications.	Charter describes process by which person providing program will adopt an annual budget.
WI		A district-sponsored CS is an instrumentality of the school district in which it is located, except in Milwaukee school districts where the school board determines whether or not CS is an instrumentality of district. A CS sponsored by common council of Milwaukee, chancellor of the University of Wisconsin - Milwaukee, or the Milwaukee is not an instrumentality of school district.		For those CS that are instrumentalities of the school district, the school district employs all personnel for CS. If the CS is not an instrumentality of the school district, it has the power to hire its own personnel (teachers must be certified). The CS has power to determine personnel qualifications (subject to certain statutes).	
WY	Teachers, parents, pupils, community members. Private person or org. may provide funding/assistance for establishment or operation of CS No private school conversions.	Operates independently from existing school district structure.		Charter petition includes employee qualifications (full-time teachers must be certified).	

Source: U.S. Department of Education, *Review of Charter School Legislation Provisions Related to Students with Disabilities*, September 1998

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State Charter School (CS) Legislation: Statutory Provisions regarding Exemptions, Liability, and Funding (February 1998)

State	Exemptions from Laws, Rules, and Regulations	Liability	General Funding
AK	Automatically exempt from local school district's textbook, program, curriculum, scheduling requirements. Other exemptions as agreed in contract. Exempt from state statute regarding election of chief school administrator.		Local school board provides CS with annual budget, not less than amount generated by pupils enrolled in CS, less administrative costs retained by district. Budget is to be used for operating expenses of educational program.
AZ	Automatically exempt from all statutes and rules relating to schools, governing boards and school districts, except as provided in the CS Law and in charter. CS must comply with laws re: civil rights, health, safety, insurance, state assessment, financial audits, special education.	District sponsors are not liable for CS acts or omissions, debts or financial obligations. State sponsors are immune from personal liability and are not liable for CS debts or financial obligations. CS must secure insurance for liability and property loss.	CSs sponsored by district are included in district's budget calculations for base support and transportation support level. Charter describes method by which district funds CS. For CSs sponsored by state board of education or state board for charter schools, the CS calculates a base support and transportation support level and funds are apportioned from state board to state treasurer for disbursement to the counties for CS.
AR	All exemptions from state and local rules, regulations, policies, and procedures and provisions of Education title must be specified in contract.		
CA	No specific statement regarding exemptions. CS must comply with laws re: health, safety, civil rights, nondiscrimination and state assessment.	District governing board may require petitioner to include information on potential civil liability effects upon CS and upon the school district.	The Superintendent of Public Instruction makes apportionments from state school fund to each CS. The funds apportioned include the amount for each unit of regular, average daily attendance that is equal to the current fiscal year base revenue limit for school district to which charter petition was submitted. CS shall be deemed a "school district" for specified statutes related to public school funding.
CO	Exemptions from school district policies and state regulations are negotiated and included in contract, after they are approved by the state board of education. CS must comply with laws re: nondiscrimination, health, safety, civil rights, and state board and district content standards.	District and CS agree on their respective legal liability and the applicable insurance coverag	District includes CS pupils in its pupil enrollment. District negotiates with CS on the services and amount of funding CS will receive from district. Funding shall not be less than 80% of district per pupil operating revenues. CS pays for district-provided services out of this funding. Proportionate share of moneys generated under federal or state categorical programs shall be directed towards CSs serving pupils eligible for such aid.
CT	CS shall be subject to all federal and state laws governing public schools. A CS may file requests to waive provisions of general statutes and regulations within jurisdiction of state board of education.	State or local board of education shall have no liability for acts, omissions, debts or other obligations of CS except as may be provided in an agreement or contract with CS	Local board of student's resident district pays to local CS (a converted public school) the amount specified in charter for each pupil. State pays to state CS (a start-up sponsored by state) an amount equal to 105% of foundation level for each pupil. CS shall receive any federal funds available for education of any pupils attending CS.
DE	Automatically exempt from all provisions of this title (DE education title) and all school district regulations, except as specified in CS law. CS must comply with laws and regulations re: nondiscrimination, state assessments, health and safety.	The approving authority of CS shall have no liability for the actions or inaction of a CS. Proposed charter shall contain an assessment of the CS's potential legal liability.	State pays to CS state funding, including a pro-rated portion of any funds appropriated by state board of education that are intended to be allocated on a pupil, employee or school state share. Pupil's district of residence pays to CS the local cost per pupil, net of transportation expenses.
FL	Automatically exempt from all statutes of FL school code, except as specified in CS law and the charter. Must comply with laws and regulations re: civil rights, health, safety, welfare, anti-discrimination, state assessment and education goals, public records, public meetings, and length of school year.	The charter includes the manner in which CS will be insured, including whether or not CS is required to have liability insurance. For purposes of tort liability, CS shall be governed by specified law.	CS pupils shall be funded as if they are in a basic or special program the same as other public school pupils. Eligible CSs shall be entitled to proportionate share of categorical program funds (including transportation). Administrative fees charged by district may not exceed 5% of funds. Sponsor shall monitor revenues and expenditures of CS
GA	Automatically exempt from state rules, regulations, policies and procedures, and from other provisions, unless otherwise specified in CS law or charter.		CS will be given special preference by the state board in receiving grant funds for alternative schools, classroom technology, school improvement programs, or other grant programs designed to improve local school performance.
HI	Automatically exempt from all applicable state laws except those pertaining to collective bargaining, state procurement laws, religious, racial or sexual bias, health and safety, and statewide pupil performance standards.		CS receives an allocation of state general funds on a per pupil basis equal to the statewide per pupil expenditure for average daily attendance. All federal and other financial support shall be equal to all other public schools.

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IL	Automatically exempt from all state laws and regulations in the School Code governing public schools and local school board policies except as provided in the CS law and in the charter. Must comply with laws / regulations re: nondiscrimination, health and safety, criminal background investigations, pupil discipline, tort immunity act, abused/neglected child act, pupil school records act, IL standards and assessments.	District and CS agree on their respective legal liability and applicable insurance coverage.	CS enrollment included in enrollment of pupils' respective districts of residence. CS and local school board agree on services and amount of funding to be provided by local district in contract. Amount of funding shall not be less than 95% or more than 105% of school district's per capita pupil tuition. CS receives proportionate share of moneys generated under federal or state categorical aid programs (if pupils qualify).
KS	CS must identify school district policies, state board of education rules and regulations, and statutory requirements from which waiver is sought in the charter petition.		
LA	Automatically exempt from all rules and regulations of state board and local school board and statutory mandates and requirements applicable to public schools and public school officers, except as provided in CS law and in charter. Must comply with laws re: health, safety, civil rights, nondiscrimination, special education and state assessment. [More listed in CS Law]	Charter contains provisions re: liability issues, types and amounts of insurance coverage. Local and state school boards are immune from civil liability damages arising with respect to all activities related to operation of CS except as specified in charter.	CSs sponsored by the local board receive (from the local board) funding for each pupil (based on average daily membership in CS) that is equal to the average current operating expenditure per pupil. Start-up CSs sponsored by the state board of education receive funding in an amount equaling the combined state and local target amount which is funded for district in which CS is located. CSs shall be eligible for any other federal, state, or local funding for which the school or its pupils qualify.
MA	CS shall operate in accordance with its charter and the provisions of law regulating other public schools. Must comply with laws re: health and safety, special needs, state performance standards and assessment.	Employees are considered public employees for purposes of tort liability.	Commonwealth CS: If pupil resides in district with positive foundation gap, CS receives the average cost per pupil in resident district, directly from the state treasurer. If pupil resides in district with no positive foundation gap, CS receives the lesser of: (1) the average cost per pupil in the resident district; and (2) the average cost per pupil in the CS district. Horace Mann CS: Submits budget request to school district that reviews it. In response to budget request, HM shall receive funding from district that is not less than it would have under the district's budgetary allocation rules. Once budget amount is approved by the district, HM can spend money without further approval by district.
MI	CS shall comply with all provisions of this part and with all other state law applicable to public bodies and with federal law applicable to public bodies or school districts.	A CS has governmental immunity. A chartering authority is immune from civil liability both personally and professionally for any acts or omissions in authorizing a CS.	Charter authorizing body is the fiscal agent. The authorizing body receives a state school aid payment, which it forwards to the CS.
MN	Automatically exempt from all statutes and rules applicable to a school, a school board, or a school district except as provided in the CS law. Must comply with laws re: health and safety, special education, state educational outcomes, pupil fair dismissal, public school fees, and financial audits.	CS assumes all liability. State board of education and sponsors are immune from civil or criminal liability with respect to all activities related to a CS	CS receives the average general education revenue per pupil from state as though it were a school district. CS may use its operating revenue for any purpose related to the school. Federal aid received by state must be paid to CS (if qualified) as though it were a school district.
MS	Automatically exempt from rules, regulations, policies and procedures of state board of education and local school board and from provisions of Title 37 (Education) of State Code, except as provided in CS law or charter. Must comply with performance variables in accreditation system.		A CS may be funded by federal grants, grants, gifts, donations from private sources, and state funds appropriated for support of CS, and any other funds that may be received by the school district. State board of education may give CS preference when allocating grant funds other than state funds for alternative school programs, classroom technology, school improvement programs, mentor programs or other grant programs designed to improve local school performance.
NV	No specific statement regarding exemptions. Law states that schools must comply with laws re: discrimination, civil rights, state achievement and proficiency examinations, and others.	The application for a CS shall include guidelines for determining who is liable if CS is dissolved or its application for renewal is not approved.	CS pupils must be included in count of pupils in district for purposes of apportionments and allowances from the state distributive school account. CS is entitled to receive its proportionate share of any other money available from federal state, or local sources that the school is eligible to receive. CS may negotiate with district and state board of education for additional money to pay for services the CS wishes to offer.

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NH	Automatically exempt from state laws and rules which otherwise apply to public or nonpublic schools, or local school boards or districts, except as provided in CS Law. Must comply with laws re: nondiscrimination, special education, health and safety, and civil rights.	Local school board and district is free of liability for any action or inaction of CS. District shall not be held liable for damages in an action to recover for bodily injury, personal injury or property damage arising out of the establishment or operation of CS	Funding limitations are not applicable to charter conversion schools located in pupil's resident district. All other CSs receive from pupil's resident district, not less than 80% of average cost per pupil in that district. Sending district may provide funds, services equipment, materials or personnel to a charter school in addition to the amounts specified in this section in accordance with policies of the sending school district. Any federal or other funding available to a sending district shall be directed to CS in receiving district on an eligible per pupil basis.
NJ	CS shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools. Upon request, the commissioner may exempt CS from state regulations concerning public schools. Application shall include waivers that CS intends to request. Must comply with laws re: civil rights, health and safety, and assessment.	CS shall provide for appropriate insurance against loss or damage to its property or any liability resulting from the use of its property or from the acts or omissions of its officers and employees.	CS receives for each pupil (directly from the school district of residence) a presumptive amount equal to 90% of the local levy budget per pupil for specific grade level in the district. CS also receives any categorical aid and any federal funds directly from district of residence.
NM	CS shall comply with all provisions of the Public School Code. CS may request waiver of certain provisions for purpose of providing class size and structure flexibility, alternative curriculum opportunities, and alternative budget opportunities.		CS submits its school-based budget to district for approval. If approved, budget is passed on to the Department of Education as part of district's budget. If Department approves, it determines allocations to each school district from the public school fund and the local school board allocates the appropriate distributions to the CS pursuant to their budget.
NC	Automatically exempt from statutes and rules applicable to a local board of education or local school administrative unit, except as provided in the CS Law and in the charter. Must comply with laws re: health and safety, pupil performance standards and assessments, education of pupils with special needs.	Any sovereign immunity of CS is waived to the extent of the indemnification by insurance. State board of education is not liable for any acts or omissions of CS. If CS does not elect total independence from local board of education, immunity shall be waived to the extent of indemnification by insurance.	CS receives from state board of education an amount equal to the average per pupil allocation for average daily membership that would have otherwise gone to school district where CS located. The CS shall receive from the local district of residence an amount equal to the per pupil local current expense appropriation.
OH	Automatically exempt from all state laws and rules pertaining to schools, school districts, and boards of education, except as specified in CS Law and/or in charter. Must comply with laws and regulations re: parent rights, health and safety, state assessments.	A sponsor is not liable for damages in a tort or other civil action for harm allegedly arising from: (1) failure of CS to perform any statutory law/responsibility, (2) an action or omission of CS.	CS receives directly from Department of Education (or through Lucas County Educational Services Center), an amount equal to the number of pupils multiplied by the base formula amount of the CS, adjusted by the school district of residence's cost-of-doing-business factor.
PA	Automatically exempt from statutory requirements, regulations of the state board of education and the standards of the secretary not specifically applicable to CS, except as otherwise provided in CS Law or charter. CS are not exempt from statutes applicable to public schools other than this Act. Must comply with laws and regulations re: nondiscrimination, state assessment, [more].	CS shall be solely liable for any and all damages of any kind resulting from any legal challenge involving operation of CS. Local board shall not be liable for any activity or operation related to program of a CS. CS employees are public employees for the purposes of tort liability.	CS receives for each pupil (from district of residence) no less than the budgeted total expenditure per average daily membership minus the budgeted expenditures of the district of residence for other educational programs.
RI	CS must identify state statutes and regulations, school district rules and provisions of collective bargaining agreement from which variances are sought. Several title provisions are listed as binding (i.e. not able to be waived) in the Law.	CS has same immunity possessed by school districts to suit. A CS shall have authority to indemnify its employees to extent that they are not already indemnified by the school district.	CS receives funding from the school district equal to a percentage of the total budgeted expenses determined by dividing the number of CS pupils by total resident average daily number of pupils in school district. CS pays for district-provided services it chooses to use out of this funding. Federal aid received by the state shall be used to benefit pupils in the CS (if qualified) as though it were a district.
DC	Automatically exempt from all provisions of law and regulations applicable to a public school, a school board, or a district, except as provided in CS law. The contract between the CS and the sponsor shall reflect all agreements regarding release of CS from local district policies. Must comply with laws and regulations re: health, safety, civil rights, disability rights, nondiscrimination, state assessment, attendance, financial audits.	CS is school district for purposes of tort liability. Application contains an assumption of liability by CS for its activities. A CS must indemnify and hold harmless the school district from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury or failure to act or negligence of CS.	CS receives from sponsor, an amount equal to the state, county and school district funds based on formula.

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TX	CS is subject to federal and state laws and rules governing public schools, except that the CS is subject to this code and rules adopted under this code only to the extent the applicability to a CS of a provision of this code is specifically provided. Must comply with laws re: health and safety, special education, accountability, and assessment.	The CS is immune from liability to same extent as a school district.	CS receives from state the distribution from the available school fund for each pupil attending the CS, that district would otherwise receive. The CS receives from the district of residence an amount equal to the quotient of the tax revenue collected by district for public schools divided by number of pupils.
WI	Except as otherwise explicitly provided, chapters 115 to 121 of state statutes Education Code do not apply to CS. Must comply with laws and regulations re: health and safety.	Charter petition must include a description of the types and limits of the liability insurance the CS will carry, as well as the effect of the establishment of the CS on the liability of the school district.	For CS sponsored by school boards, the contract shall specify the amount to be paid by the school board to the charter school during each school year. For CS sponsored by a ch. 119 school district, the Department shall pay to CS an amount equal to the shared cost per member in the previous school year of the school district operating under ch. 119 multiplied by the number of pupils attending the CS.
WY	CS must comply with provisions set forth in its charter petition. Must comply with laws re: state minimum standards.	Charter petition must demonstrate that CS is adequately insured for liability, including errors and omissions, and that the school district is indemnified to the fullest extent possible.	Each pupil attending a CS shall be counted among the average daily membership of the district in which school is located.

Source: U.S. Department of Education, *Review of Charter School Legislation Provisions Related to Students with Disabilities*, September 1998

State Charter School (CS) Legislation: Statutory Provisions That May Affect Students With Disabilities (February 1998)

State	Non-discriminatory Admissions, Expressly Related to Disability	Other Pertinent Admissions Requirements	Targeted Populations	Chartering Preference	Enrollment and Recording Provisions Regarding Special Populations	Funding For Special Education	Transportation That May Apply To Special Education
AK		Contract includes admission policies and procedures. CS may limit enrollment to age/grade or pupils who will benefit from a particular teaching method or curriculum.					
AZ	Shall not limit admission based on a disabling condition.	CS shall give preference to returning pupils and siblings. A district-sponsored CS shall give preference to in-district pupils. CS may limit enrollment to age/grade.					CS is subject to transportation provisions in specified statute (applicable to district). CS receives funding for transportation as part of total funding for school.
AR							

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CA		Application includes admission requirements, if applicable. Admission shall not be based on pupil's residence. Conversions shall give preference to pupils residing in former attendance area.	Academically low-achieving.	Schools demonstrating capability to provide solid learning experiences to academically low-achieving.	Legislative Analyst shall contract for an evaluation of CS approach, including an analysis of the level of increased (any change in) focus on academically low-achieving pupils.	CS receives state and federal funds for special education [from Superintendent of Public Instruction].	
CO	Enrollment policy is subject to all federal and state laws prohibiting discrimination on basis of disability or need for special education services.	Application includes enrollment policies. CS shall enroll any in-district pupil, except no CS shall be required to make alterations to facility except as required by law.	Academically low-achieving.	Schools serving at risk pupils (less likely to succeed because of physical, emotional, socioeconomic or cultural factors).	Of the charters granted prior to 7/1/97 (max. 60), at least 16 reserved for schools serving at-risk pupils.	CS receives proportionate share of state and federal funds generated by pupils with disabilities and staff serving them. Pupil's resident district responsible for excess costs.	Application includes plans for meeting transportation needs of pupils. If CS plans to provide transportation, application must include plan for meeting needs of low-income and academically low-achieving pupils.
CT	Shall not discriminate in admissions on the basis of disability.	Application includes admission criteria and procedures to ensure open access. CS may limit enrollment by age/grade, or specialized education focus; may give preference to siblings.			May limit enrollment to a specialized education focus. Governing council of CS must submit an annual report (to Commissioner of Education) including accomplishment of any specialized focus of CS.	For State CS, pupil's resident district pays to State CS amount equal to difference between reasonable cost of educating special needs pupil and general per pupil funding. All CS eligible to same extent as boards of education for special education grants. CS shall receive any federal funds available for education of any pupils attending CS.	Host district provides transportation to CS for in-district pupils, unless otherwise arranged by CS. Pupil's resident district may provide transportation to pupils attending CS outside district and will be reimbursed by State.

DE	Shall not discriminate against any pupil in admissions process because of handicap.	CS shall not restrict admissions, except by age/ grade. Conversions shall give preference to original pupils and siblings. CS may give preference to in-district pupils, at risk pupils, or pupils interested in the teaching/ subject matter.		Schools demonstrating that their educational program will accommodate at risk and special education students.	May give enrollment preference to pupils at risk of academic failure.	CS receives from pupil's resident district the local cost per pupil (regular or special education). Pupil's resident district is responsible for additional tuition required by pupils attending special classes or treatment programs. CS receives a pro-rated portion of any funds appropriated by state board of education that are intended to be allocated on a pupil, employee or school state share.	At CS request, host district provides transportation to CS for in-district pupils, or pupil's resident district pays CS the average cost per pupil (regular or special education) to provide transportation within district where CS located. Non-resident pupils responsible for getting to district.
FL	Pupils w/handicapping conditions shall have equal opportunity of being selected for enrollment.	Charter addresses admission procedures. CS open to any in-district pupil. Conversions shall give preference to original pupils. CS may give preference to siblings, children of CS employees; may limit enrollment to age/grade, or at risk pupils.	Academically low-achieving.		May limit enrollment to pupils at risk of dropping out or at risk of academic failure, including exceptional education pupils.	CS receives funds for pupils in basic or special program, the same as is provided for these pupils in public schools. Eligible CSs shall be entitled to proportionate share of categorical program funds.	CS provides transportation services and is entitled to receive transportation funds. CS may contract with district or other. Transportation must not be barrier to equal access.
GA							
HI						Statewide per pupil funds (received by CS) are adjusted to reflect additional expense of special education pupils. All federal and other financial support shall be equal to all other public schools.	

IL		Proposal includes age/grade range, number of pupils, and other admission criteria that are legal if used by a district. CS shall be open to any in-district pupil; shall give preference to prior year pupils and siblings.	At-risk pupils (less likely to succeed because of physical, emotional, socioeconomic, or cultural factors).	Schools serving at-risk pupils (less likely to succeed because of physical, emotional, socioeconomic, cultural factors).		CS receives, from pupil's resident district, the proportionate share of state and federal funds generated by pupils with disabilities and staff serving them.	Proposal includes plan for meeting transportation needs of pupils, including low-income and academically low-achieving pupils.
KS		Charter contains admission criteria.					Host district provides transportation to CS for pupils who qualify for free meals under National School Lunch Act and live 2 miles or more from CS; may provide transportation for others.
LA	Shall not exclude pupils based on intellectual ability, identification as an exceptional child.	Proposed charter contains admission requirements consistent with scope and mission of CS. CS shall enroll pupils eligible by residency. Conversion CS shall give preference to original pupils. After first year, CS shall give preference to prior year pupils and siblings.	At-risk pupils (includes pupils identified as exceptional children).		Conversions must enroll same percentage of pupils eligible for free/reduced lunch as enrolled in year prior to conversion. Start-ups, which must have same percentage of at-risk pupils as percentage in district who are eligible for free/reduced lunch, shall enroll these at-risk pupils in proportion of at least 85% eligible for free/reduced lunch and up to 15% as otherwise defined (includes exceptional pupils).	CS receives state and federal funds for special education.	CS may negotiate with district for transportation services.
MA	Shall not discriminate (in admissions) on basis of mental or physical disability, special need, academic achievement.	Application includes admission method. CS shall give preference to in-district pupils; may limit enrollment to grade level.			Commissioner of Education required to collect data on number of students in charter schools with IEPs.	District of residence is fiscally responsible for special needs pupils who require a private day or residential school.	Host district provides transportation to CS for in-district pupils. Non-resident pupils are eligible for transportation in accordance with specified statute. CS shall not receive transportation funds above amount required.

MI	Shall not discriminate in its pupil admissions policies or practices on basis of intellectual ability, measures of achievement or aptitude, status as a handicapped person.	Application includes admission policy and criteria. CS shall not discriminate on any basis illegal if used by district; may limit admission to age/grade or any basis legal if used by district.					
MN	May not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude.	Contract contains admission policies and procedures. CS may limit admission to age/grade, residents of geographic area where percentage of non-Caucasians is greater than the percentage of non-Caucasians in congressional district in which that area is located, as long as school reflects racial and ethnic diversity of the specific area.				CS receives special education aid from State as though it were a school district.	Either host district or CS provides transportation to CS for in-district pupils. If CS elects to provide transportation, it receives state aid (including funding for transporting students with disabilities). CS is not required to provide or pay for non-resident pupils to be transported to border of district but may reimburse for families at or below poverty level.
MS							
NV	Shall not accept applications or otherwise discriminate based on disability of pupil.	Application includes admission policy and criteria, which must be directly related to school's goals/ mission. CS may limit enrollment to pupils with disabilities or who are at risk.			May form charter schools dedicated exclusively to pupils with disabilities or at risk. Each year, CS submits to sponsor a report including the count of pupils enrolled in special education.	CS pupils in special education programs must be included in count of pupils in school district for purposes of apportionments from state school account. CS is entitled to receive its proportionate share of any money available from federal, state, or local sources that the school is eligible to receive.	CS adheres to same transportation policy in effect in local district. CS may contract with district for transportation services.
NM							

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NH		Application contains admissions procedures. CS shall give absolute preference to in-district pupils. CS may limit enrollment to age/grade, pupil needs, areas of academic focus; may select pupils on basis of aptitude, academic achievement if directly related to goals of the school.	Target pupil groups.		May limit enrollment to at-risk pupils.	District is responsible for the funding and educational decision-making process for educationally handicapped pupils. Any federal or other funding available to a sending district shall be directed to CS in receiving district on an eligible per pupil basis.	Host district provides transportation to in-district pupils. Any added costs borne by the CS. Application contains transportation plan, including provisions for transportation of non-resident pupils using CS resources. CS and host school district encouraged to enter into contract for transportation services.
NJ	Shall not discriminate in its admission policies and practices on basis of intellectual ability, measures of achievement or aptitude, status as a handicapped person.	Application includes admission policy and criteria. CS shall give preference to in-district pupils, returning pupils and siblings; may limit admission to grade, areas of academic focus; may establish reasonable criteria to evaluate prospective pupils.			Admission policy shall (to max. extent possible) seek enrollment of cross-section of community's school age population, including racial and academic factors.	District of residence is fiscally responsible for special needs pupils who require a private day or residential school. CS receives any categorical aid and any federal funds directly from district of residence.	Host district provides transportation to CS for in-district pupils. Non-resident pupils receive transportation pursuant to State board of education regulations.
NC	Shall not limit admission on basis of intellectual ability, measures of achievement or aptitude, disability.	Application contains admission policies and procedures. CS shall be open to any pupil qualified for admission to public school; shall not base admission on pupil's residence, except in case of conversions.	At risk of academic failure.	Schools serving pupils at risk of academic failure.	Within one year, population in CS shall reflect the racial and ethnic composition of local district or of targeted population within local school district.	CS receives from State additional amount (over per pupil allocation) for child with special needs.	

OH	May not limit admission on basis of intellectual ability, measures of achievement or aptitude.	Contract specifies admission standards. CS open to any pupil eligible to attend school in Lucas County. CS shall give preference to returning pupils; may give preference to siblings; may limit admission to age/grade, at risk, or residents of specific geographic area.			May limit enrollment to at-risk pupils (as defined in the contract).	CS receives from Department an amount equal to the actual cost for special education pupil in resident district, less a prorated share for the pupil of any amount received from state or federal funds.	Host district provides transportation to CS for in-district pupils. Pupil's resident district is not required to provide transportation to pupil attending CS outside district.
PA	Shall not discriminate in admission policies or practices on basis of intellectual ability, measures of achievement or aptitude, status as a person with a disability.	Application includes admission policy and criteria. CS open to all PA resident pupils. CS shall give preference to in-district pupils; may give preference to child of CS founder and siblings; may limit admission to age/grade or area of academic focus; may establish reasonable criteria to evaluate prospective pupils.				CS shall receive additional funding from district of residence for each special education pupil based on formula. CS may request that intermediate unit provide services to assist CS to address specific needs of exceptional pupils, for which CS must pay.	Host district provides transportation to CS for in-district pupils. Non-resident pupils provided transportation under specified statute. Resident districts which provide transportation for pupils attending CS outside district are eligible for payments.
RI	May establish academic standards as condition for eligibility which do not discriminate against otherwise qualified individuals with a disability.	Application includes enrollment procedures. CS may establish reasonable academic standards as condition for eligibility which are in accordance with state law and which do not discriminate against otherwise qualified pupils with a disability.	Educationally disadvantaged and at risk.	Schools serving educationally disadvantaged and at risk pupils.	The combined percentage of special education, at-risk, and LEP pupils and pupils eligible for free or reduced lunch must at least equal the combined percentage of these student populations in the district as a whole. Federal aid received by the state shall be used to benefit pupils in the CS (if qualified) as though it were a district.	CS may receive additional funding if combined percentage of special education, at risk, LEP pupils and pupils eligible for free or reduced lunch exceeds the combined percentage of these pupils in district as a whole.	CS may negotiate with district for transportation services which are paid for out of CS revenues.

SC	May not limit or deny admission to any individual or group of individuals.	Application includes admission policies and procedures. CS shall admit all pupils eligible to attend public school and shall not deny or show preference in admission to any individual or group of individuals. CS may give preference to siblings or children of CS employees.				CS receives proportionate share of state and federal funds generated by pupils with disabilities and staff serving them. Sponsor shall distribute to CS federal funds which are allocated to district on basis of number of special characteristics of pupils attending CS.	Charter contains plan for meeting transportation needs of pupils.
TX	Prohibit discrimination in admission policy on basis of disability, academic ability.	Charter specifies any type of enrollment criteria used.			State board of education may grant additional charters (over state limit) for proposed schools where at least 75% of population will be pupils at risk of dropping out.		CS provides transportation under same laws governing transportation provided by a school district.
WI	May not discriminate in admission on basis of person's physical, mental, emotional, or learning disability.	Petition contains admission requirements. Conversions shall give preference to pupils who reside in attendance area of former school.		Schools serving at-risk pupils (includes pupils who are academically behind their age group).			
WY		Petition includes admissions requirements (if applicable) and minimum enrollment requirements as specified by district board. Admission shall not be determined according to place of residence. Conversions shall give preference to pupils who reside in former attendance area. Admission shall not be determined solely on academic abilities or achievements, including minimum test scores or IQs.					

Source: U.S. Department of Education, *Review of Charter School Legislation Provisions Related to Students with Disabilities*, September 1998

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• • • Charter School Litigation

Federal Cases

Villanueva v. Carere, 85 F.3d 481 (10th Cir. 1996). The Tenth Circuit ruled that the Colorado Charter Schools Act provision that reserves a certain number of charters for applications which are designed to increase the educational opportunities of "at risk students" does not on its face violate the equal protection clause of the Fourteenth Amendment. At risk students are defined as those who because of physical, emotional, socioeconomic or cultural factors are less likely to succeed in a conventional educational environment. The plaintiffs, a group of Hispanic parents, claimed that the word: "cultural" is a code word for ethnic minority and therefore classifies students according to race. The Tenth Circuit rejected this argument, finding no such classification, since all charter schools including those designed to serve at risk students must admit students in a nondiscriminatory manner and conversely, at risk students are not required to attend the special purpose charter schools but are free to choose other public school options. Given the absence of a suspect classification, the court found that the Act was rationally related to the legitimate state interest of encouraging innovation in education. The court also found that the plaintiffs had failed to establish either discriminatory intent or discriminatory impact in Pueblo School District No. 60's decision to grant a charter and close two neighborhood elementary schools. Thus, this action violated neither the equal protection clause nor Title VI of Civil Rights Act of 1964.

Berry v. School Dist. of City of Benton Harbor, 56 F. Supp.2d 866 (W.D. Mich. 1999). District court with oversight of school district subject to a desegregation decree was asked to determine whether two charter schools seeking to open in the district could receive state funding. The State of Michigan was a named defendant in the original desegregation case. The court granted state funding to one of the charters but denied it to the other. In so ruling, the court said that if "state funding of charter schools, either by its nature or its magnitude, would have the effect of interfering with the ability of any [school district] defendant to meet its obligations under the remedial order," that funding could be denied. The court authorized the funding to one charter school on the condition that its racial balance approximate that of the school district as a whole. As to the second school, the court denied the funding because it did not have adequate information as to the racial composition of the student body to determine whether state funding would interfere with the state's and school district's obligations under the desegregation decree. The court held that limiting state funding of charter schools for the purpose of protecting the remedial order was consistent with the routinely accepted proposition that where a state and a school district have engaged in past racial discrimination, generally accepted state law is not enforceable to the extent it prevents implementation of the remedial order of the court.

Porta v. Klagholz, 19 F. Supp.2d 290 (D.N.J. 1998). Refusing to rule on the taxpayer plaintiff's request for declaratory relief that operating a public charter school inside a church is a *per se* violation of the Establishment Clause, the district court instead considered whether the New Jersey Charter School Program Act itself advances religion on its face. The court found no First Amendment violation because the legislative policy behind the law is to encourage and facilitate the development of charter schools as public schools and there was no evidence of an intent, hidden or overt, to advance any religious belief or agenda. The court also ruled that the operation of a public charter school in a space leased on church premises does not result in a *per se* violation of the Establishment Clause. In the case before the court, the public charter school's lease of space from a Christian church led to no government indoctrination of religious beliefs. There was no religious iconography in the classrooms or common areas used by the school. The school did not define its students, faculty, or governance by reference to religion. And there was no evidence of any relationship between the school and the church except for the landlord-tenant relationship created by the lease. Thus, under these circumstances, there was no violation of the Establishment Clause for the public charter school to operate within a religious building pursuant to a standard commercial lease.

State Cases

Wilson v. State Board of Education, 75 Cal. App.4th 1125, 89 Cal.Rptr.2d 745 (Cal. App. 1 Dist. 1999). California appellate court upheld constitutionality of state Charter Schools Act against facial challenge by residents and taxpayers. The court found no violations of the state constitutional provisions 1) obligating the legislature to provide for a system of common schools; 2) requiring public schools to be under the exclusive jurisdiction of officers of the public school system; 3) prohibiting the appropriation of public money for the support of sectarian schools; and 4) requiring the State Board of Education to adopt textbooks for use in grade schools through out the state. The court found that the Act is a constitutional delegation of legislative powers.

Board of Education of School Dist. No. 1 v. Booth, 984 P.2d 639 (Colo. 1999). Supreme Court of Colorado held that provision in state Charter Schools Act which authorizes the State Board of Education to order a local school board to approve a charter school application that the local board has rejected when the State Board finds approval to be in the best interests of the pupils, school district or community is constitutional. Balancing the

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local board's interest in exercising control over instruction with the State Board's interest in asserting general supervisory authority, the court said that it would give deference to the Legislature's determination of an appropriate balance unless it clearly impedes the capacity of either the State Board or a local board to exercise its independent constitutional authority. Here, the court found that the provision allowing the State Board to determine whether the local board had correctly denied a charter school application according to the best interests of its pupils, school district and community is constitutional. However, the State Board may only require approval of the charter application as submitted and does not have authority to require status reports. The court went on to hold that approval of a charter application does not establish a final contract between the local board and charter school applicants but instead is an interim step toward creation of that contract. Thus, when the State Board orders a local board to approve a charter it has previously denied, it means the charter applicants and the local board must resolve any issues necessary to permit the applicants to open the charter school.

Beaufort County Board of Education v. Lighthouse Charter School Committee, 335 S.C. 230, 516 S.E.2d 655 (1999). South Carolina Supreme Court found that local board of education properly denied application for charter school based on its findings that the applicant had not satisfied the statutory provisions requiring it to meet certain health, safety and civil rights standards and to enroll a student body whose racial composition requirement does not vary more than 10 percent from the racial make up of the district. The court said that the Board did not have to accept as evidence applicant's summary assurances of compliance with health and safety requirements and that it properly considered a letter from the United States Department of Education Office for Civil Rights stating that charter schools must comply with desegregation agreements. The applicant here erroneously informed the board that it was not required to do so. Because the applicant failed to identify its prospective students, the board's finding that it had failed to comply with the racial composition requirement was not clearly erroneous. The court did say that the constitutionality of this provision should be determined on remand. Finally, the court said that the board's rejection of the applicant's reliance on speculative revenue from proposed fund raising was not arbitrary and was sufficient to support its determination that the applicant had failed to provide evidence of an economically sound plan.

Academy of Charter Schools v. Adams County School District No. 12, 1999 WL 304697 (Colo. App. 1999). Colorado Court of Appeals ruled that charter school as subordinate agency of the school district may not sue its host school district in order to resolve disagreements under the charter school contract. Court did reverse trial court's dismissal of claim that school district violated charter school board members' equal protection rights by refusing to release funds to pay them as teachers at the charter school but allowing teachers at other charter schools to be board members.

In Re Grant of Charter School Application of Englewood on Palisades Charter School, 320 N.J. Super. 174, 727 A.2d 15 (N.J. Super. A.D. 1999). New Jersey appellate court upheld grant of three charter school applications and the Charter School Program Act itself against challenge brought by three school districts. Court found that applications satisfied informational requirements of the Act including expected qualifications of board members, description and address of physical location of schools, calendar and schedule, staff responsibilities and proposed teacher qualifications, means of ensuring an enrollment reflecting a cross section of the community, educational goals, the curriculum to be offered, the methods of assessment, the kinds of innovation and improved learning environments to be provided, satisfaction of core curriculum content standards, accommodation of gifted and talented students' needs, measures to address substance abuse, teacher evaluation methods and financial plan. Charter School Program Act's funding provision was not unconstitutional on its face since it did not impede a school district's ability to provide a constitutionally adequate education for its regular students. Act did not violate constitutional provision prohibiting use of public money for private purposes since charter schools are public schools subject to oversight by the Commissioner of Education. Act did not improperly delegate legislative authority since charter schools were still subject to control by the Commissioner of Education and had to meet the Act's standards in order to maintain their charters. Act did not violate equal protection even though it created two categories of education supported by public funds absent evidence that students in existing district would be treated less favorably than charter school students or that per-pupil spending in existing district had to decrease in order to maintain guaranteed level of spending in the charter school.

Jersey City Education Association v. City of Jersey City, 316 N.J. Super. 245, 720 A.2d 356 (N.J. Super. A.D. 1998). New Jersey appellate court ruled that provision in state Charter School Program Act prohibiting charter school from using public funds to construct a new facility did not prevent the city from using proceeds from a municipal bond sale to construct a facility that would in part be leased to a charter school. The court pointed out that the statute does not say that no public funds may be used to build a facility that would house a charter school and does not limit charter schools to finding space in existing public buildings.

Shelby School v. Arizona State Board of Education, 192 Ariz. 156, 962 P.2d 230 (Ariz. App. Div. 1 1998). Arizona appellate court found that State Board of Education did not make adequate findings of fact and conclusions of law in denying issuance of charter to the Shelby School. Statute

requires "a concise and explicit statement" explaining the basis for the board's denial. Knowing the precise basis is important where there is significant public interest in the use of public funds, the board has broad discretion in granting charters and much of the deliberation takes place behind closed doors. However, the court said the board was within its discretion to establish a creditworthiness requirement since such information would reasonably assist the board in determining the financial reliability of persons who would be receiving large sums of state money and to deny a charter based on poor creditworthiness. The board was not required to adhere to the Administrative Procedures Act in adopting the creditworthiness element as part of its information gathering process. The court also held that the Charter Act did not create a property interest in obtaining a charter such that an applicant would be entitled to due process under the Fourteenth Amendment. The board's investigation into the religious affiliation of the applicant and some of its constituents did not violate their free exercise, free association or privacy rights. Since the board must ensure that charter schools are nonsectarian in their programs, policies, practices and all other operations, the board was entitled to look into unsolicited information it received that charged the Shelby School had close ties to a church. Finally, the court found that the board's actions did not violate the equal protection clause because it is reasonable for charter schools to be classified differently from non-charter schools because of the different manner in which they are formed and operated. The appellate court remanded the case with instructions to order that the board reopen the decision as to whether to grant a charter and to allow supplementation of the application and to make complete findings of fact and conclusions of law to support its decision.

Cocoa Academy for Aerospace Technology v. School Board of Brevard County, 706 So.2d 397 (Fla. App. 5 Dist. 1998). Florida appellate court dismissed appeal brought by academy seeking review of school board's denial of an application to form a charter school. The academy was not a legal entity that could appear before a district court; it was simply the name of a program that had existed at a public high school but had not become a state agency nor any other legally recognizable entity.

Council of Organizations and others for Education About Parochiaid v. Governor, 455 Mich. 557, 566 N.W.2d 208 (1997). Michigan Supreme Court upheld the constitutionality of the state Charter Schools Act against attack brought to obtain declaratory relief and to enjoin distribution of public funds under the Act. The court held that the Charter School Act was constitutional under the provision precluding the use of public monies for nonpublic schools. The court found that although public school academies are not under the immediate and exclusive control of the state, there is no constitutional requirement that the state have exclusive control of a school system and public school academies are ultimately under the control of the state and its agents. The court rejected the notion that public school academies are not public schools because they are run by a private board of directors and the authorizing body has no means to select members of the board. The court pointed out that the Legislature mandated the board selection process and the public maintains control through the authorizing bodies whose boards are publicly elected or appointed by public bodies. The Charter Schools Act is consistent with the parochiaid amendment since it specifically prohibits religious organizations from establishing a public school academy and further prohibits any organizational or contractual affiliations with churches or other religious organizations. Finally, the act is not unconstitutional on the theory that it divests the State Board of Education of its duty to lead and supervise public education; the Legislature declared that public school academies are public schools necessarily subject to the state board to the same extent as other public schools.

• • • Charter School Contracts

ISSUES AND CHECKLIST FOR THE CONTRACT

Most statutes specify some of the crucial requirements for the contract between the district and the charter school. Even where the statute spells out basic standards, the contract should reflect and contain some of those details. Obviously, the statutory enumerations should only be the starting point for the negotiation of an agreement for a charter school. The following subjects should be seriously reviewed and considered for inclusion in any charter school contract:

1. **Mission Statement and Purpose.** The contract should specify how the charter school meets the requirements of the statute and, particularly, in what areas it will develop innovative programs or approaches to education.

2. **Educational Goals, Objectives and Student Performance Standards.** The goals and objectives to be achieved should be clearly stated. This should include accountability standards that the district will use to determine whether the goals are being met. Obviously, if the charter school is doing nothing more than any other public school in the district, the reason justifying its charter is nullified.

3. **Term.** Regardless of whether the statute specifies the maximum length of the charter, the term of the charter should be set forth in the agreement.

4. **Governance Structure.** The governance structure of the charter school should be clearly spelled out, detailing the involvement of parents, professional educators and community members, and who has authority to act

on behalf of the school and interact with the school district.

5. **General Powers.** Each contract should include a statement of the general powers of the charter school, as well as any limitations thereon. Both the charter school operators and the school district should clearly understand what powers the charter school governing body may exercise.

6. **Faith and Credit.** The contract should specify that the charter school may not extend the faith and credit of the school district to any third person or entity and that the charter school may not contractually bind the school district with any third party. A California district was confronted with the debts of a defunct charter school and the creditors were looking to the school district for payment of charges that the district neither approved nor knew anything about. The Delaware statute states that the approving school district has no liability for the actions or inactions of a charter school.

7. **Enrollment Policy.** The enrollment policy of the charter school needs to be spelled out in detail including criteria for enrollment decisions.

8. **Budget.** Budgetary considerations are clearly a significant item and a proposed budget should be part of any contract.

9. **Funding Mechanism.** If funding is based on the per-pupil operating revenues of the school district, the contract should contain a provision permitting adjustment of funding based on state education department audits to reflect any state funding adjustments.

10. **Number of Students.** Maximum and minimum limitations on the numbers of students to be enrolled in the charter school should be specified. The district's funding of the charter school ordinarily will be tied to its pupil population, therefore a maximum limitation on the number of pupils to be funded is necessary in order to limit the school district's financial obligation. A minimum figure should be specified to ensure the viability of the educational program and, where the school district is providing a facility for the school, to ensure that the facility is properly utilized. Because the number of students enrolled in a charter school may fluctuate during a school year, the parties may wish to consider specifying that the school district may terminate the contract if enrollment falls below the specified number for a specified time period.

11. **Disbursements.** The amount and timing of disbursements to the charter school from the school district should be specified in the agreement. The parties may wish to specify that an advance will be made for books, supplies, and instructional materials, and that remaining funds will be disbursed monthly.

12. **Review.** The contract should provide for periodic review of the number of pupils actually enrolled in the charter school and for appropriate adjustments in funding to reflect actual enrollment.

13. **Audit.** A provision for an annual audit of the financial administrative operations of the charter school and how it will be conducted should be included.

14. **Transportation.** The contract should deal with how the transportation needs of pupils will be met. If the charter school intends to provide transportation, how will it meet the needs of low income and academically low achieving students?

15. **School District Services.** The agreement should specify those services to be provided to the charter school by the school district and the costs to be charged for those services, if any.

16. **Facilities.** If the school district is to provide a facility use for the charter school, the contract should identify the facility, describe and limit the permissible use of the facility, describe and limit permissible alterations to the facility, provide for district inspection of the facility, allocate operational costs to be borne by the parties, and provide for alternative arrangements or termination of the school in the event the facility is damaged or destroyed.

17. **Calendar.** The contract should address the charter school's calendar, particularly if the school district is to provide transportation or other services that are normally offered according to the school district's own calendar.

18. **Student Disciplinary Plan.** How will the school ensure due process rights of students? Is a student expelled from a charter school entitled to be placed in one of the regular school classrooms?

19. Health and Social Services. The contract should describe the charter school's plan for the delivery of health and social services, including response to health emergencies, interpretation of health care information received from outside sources, reporting child abuse and neglect, and identification and referral to outside agencies of students in need of psychological and social work services.

20. **LEP Services.** The contract should set forth the charter school's plan for providing services to Limited English Proficient students, if any.

21. Special Education. The contract should set forth the charter school's plan for identifying and providing appropriate services for disabled students in a manner consistent with its obligations under state and federal law. The emphasis and preferences of some charter school statutes are such that it is particularly important that the parties provide for the delivery of adequate special education services.

22. **Employment Issues.** The contract should state whether employees of the charter school will have any employment relationship whatsoever with the school district, and if so, should specifically define that relationship. Does the union contract apply? Since some school

district employees may go to work for the charter school, the short and long term effect of such a move should be considered and specified in the contract. One Colorado district recently confronted a new charter school which proposed a contract provision allowing them to deny employment or fire teachers if they have sex "outside of holy wedlock or legal matrimony" and specified that a "common-law marriage would not be considered a legal marriage." When the ACLU threatened a class-action lawsuit, the charter school dropped this provision.

23. **Reporting.** The frequency and type of reporting to be provided to the school district by the charter school should be specified in the agreement. The district may wish to receive financial reports, student enrollment figures, and student achievement information as often as each month.

24. **Data Collection.** Because the school district may require data collection in connection with lawsuits, governmental agency audits, or other proceedings, the contract should specify that the charter school shall be obligated to collect and provide such data regarding staffing, pupil enrollment, pupil records, or school operations, if required by the school district.

25. **Waiver.** Waiver from state laws, regulations and district policies and rules should be clearly specified, or the process for requesting such waivers.

26. **Insurance and Liability.** The contract should specify whether the charter school will be covered by any of the insurance programs of the school district and the question of applicability of any governmental immunity statute needs to be clearly dealt with. Many of the statutes adopted in 1995 provide indemnification to charter school trustees. New Hampshire and Texas extend governmental immunity to them. New Hampshire requires a global hold harmless clause "protecting the local school board, school district . . . from liability for any action or inaction of the charter school . . ."

27. **Termination and Revocation.** The contract should contain provisions setting forth the circumstances under which the contract may be terminated and the charter revoked by the respective parties, and establish a termination procedure. Since almost all the legislation provides for at least annual evaluation of the charter school by the authorizing agency to determine whether it is implementing the innovative programs and achieving the results that it contracted to obtain, failure to meet these standards is generally grounds for revocation of the charter in most legislation. There should be clear provisions for such evaluation and the criteria to be applied. The contract should specifically provide for notice and an opportunity to be heard before termination by the board of education.

28. **Dissolution.** The contract should contain a section on dissolution in the event that the charter school ceases operation for any reason, including nonrenewal or revocation. This section should state who shall be responsible for winding up the business and affairs of the charter school and should require the charter school personnel to cooperate fully in the winding up of the affairs of the school.

29. **Dispute Resolution.** The contract should provide for an orderly procedure for the resolution of disputes that may arise between the charter school and the school district.

Source: M. Semple, *Charter Schools: A Legal Overview, School Reform: The Legal Challenges of Change* (NSBA, April 1996)

• • • Charter School Research

The following list was compiled by M.J. Armstrong for the U.S. Department of Education:

National Study of Charter Schools. The National Study of Charter Schools is a comprehensive, 4-year study of charter schools designed to examine what types of students attend charter schools, how charter laws and policies affect charter schools in each state, the conditions under which charter schools improve or do not improve student achievement and other aspects of student learning, and how charter schools affect local and state systems of public education. The study, which began in 1995, includes an annual telephone survey of all charter schools; intensive case studies of 90 charter schools and a smaller number of comparison schools; and interviews with staff at charter granting agencies, state educational agencies, and school districts.

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Research on Charter School Accountability. A key feature of charter schools is that they are held accountable for meeting the standards stated in their charter and for following performance procedures in student admissions. The 2-year study on charter school accountability, begun in 1997, will document ways charter schools and government agencies approach accountability, and trace the consequences of different accountability methods on the schools' ability to pursue coherent instructional programs and to serve families and children.

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Charter Schools and Students with Disabilities. Westat, Inc., in conjunction with SRI International, is conducting a study that will examine how charter schools are serving students with disabilities. They will examine, in part, the reason parents enroll students with disabilities in charter schools, the nature of services provided, and the outcome goals charter schools have for students with disabilities. The 2-year study, which was begun in 1997, includes site visits to 32 charter schools nationwide.

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Charter School Finance. The American Federation of Teachers, in conjunction with Policy Studies Associates, Inc., began a 2-year study of charter school finance in September 1998. The study aims to determine whether states' policies and practices for charter school finance help meet the policy goals set forth in their charter school legislation. Areas of study include charter schools' access to funding and other resources; whether finances are comparable to those available to other public schools; the spending patterns of charter schools; the level of financial independence granted to charter schools; the extent of financial oversight of charter schools; and the unforeseen costs of charter schools to states and sponsoring agencies.

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Schools and Staffing Survey (SASS). The National Center for Education Statistics (NCES) has, since the late 1980s, conducted a number of surveys designed to collect data on the characteristics of schools and school staff. The effort includes an integrated set of surveys that collect information on schools, their principals, and their teachers. SASS is a comprehensive national survey concerning the school work force and aspects of teacher supply and demand. It provides information on teacher qualifications, school programs and services, uses of academic performance assessments, parent involvement, class size, and many other topics that can be used to describe schooling. NCES plans to include a charter school component in the next administration of SASS scheduled for the fall of 1999. The data that results will provide information about charter granting agencies, school facilities, home-based learning, exemptions from state and district policies, and parent participation. In addition, it will facilitate comparisons of charter schools with other public schools. Following the 1999 - 2000 administration, SASS will be administered on a 4-year cycle, which will present an opportunity to study charter schools over time.

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Evaluation of the National Public Charter School Program. The evaluation of the federal charter schools program is a comprehensive examination of the impact of this grant program on the development and implementation of charter schools. The evaluation will examine how

the program encourages the development of charter schools, including how state grantees and charter granting entities encourage the development of charter schools and how federally funded charter schools and school planners use their grants. It will identify the key characteristics of federally funded charter schools, staff, and students (including flexibility provisions, educational approaches, accountability structures, student achievement systems and measures), to the extent in which charter schools are targeted to specific populations, and whether charter school students are making progress on student performance and other measures. The contract was awarded in September 1998.

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Study of Growth in Student Achievement. Recognizing the importance of accountability for results, ED has awarded a contract to the Center for School Change at the University of Minnesota's Humphrey Institute of Public Affairs to study how effective public schools measure growth in student achievement. The project will first develop criteria for effective school-level student assessment. Several nationally recognized assessment experts will help develop these criteria. The project next will ask for nominations from groups around the nation regarding schools whose assessment programs meet these criteria. Project staff and evaluation consultants will seek 30 outstanding public schools — 15 charter schools and 15 other public schools — and gather information from them. The project will convene a conference of school, parent, community, and business organizations to discuss what can be learned from these schools. The results of the project will be shared via Internet, as well as through published material which will be widely disseminated to educator, state, family, business, and community groups.

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Project SEARCH (Special Education as Requirements in Charter Schools) . Project SEARCH is funded through the Office of Special Education Programs Field-Initiated Research Grants program. This is a 3-year qualitative study charged with investigating current special education policies and practices in charter schools. Based on its findings, the study will develop a set of policy recommendations to present for review and validation to a national policy meeting of federal, state, and district level general and special educators, parents, charter school representatives, and others. The study will be completed in March 2001. A more detailed description of Project SEARCH is available on the NASDSE Web site (www.nasdse.org/project_search.htm), where all project reports will be available. A report of the first project activity, a scan of policy issues in 15 states, is now available on the site in text and PDF formats.

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Study of Competing Strategies for Education Reform. The Office of Educational Research and Improvement (OERI) is supporting a 3-year field-initiated study involving charter schools. This study, to be completed in the fall of 1999, assesses two competing strategies for educational reform in Michigan: Charter Schools and Professional Development Schools. Through comparative case studies of charter schools and professional development schools, the research team is examining the degree to which each strategy is successful in addressing and overcoming common obstacles to educational reform. These include the creation and sustenance of school communities, the establishment of standards and accountability for meeting them, and the development of strategies to "scale up" reforms from the individual school to the broader education system.

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Source: U.S. Department of Education, Office of Educational Research and Improvement, National Institute on Student Achievement, Curriculum and Assessment, Research Today, August 1999.

For more information on charter schools, you may want to visit the following Web sites:

http://www.ed.gov/pubs/studies.html#Charter

http://www.uscharterschools.org

http://www.ecs.org

http://www.nea.org/issues/charter

http://csr.syr.edu/index.html

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